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CHANCE TIDYMAN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHANCE TIDYMAN.

CASE NO.: 3:24-cv-01583-CRB

**PLAINTIFF'S RESPONSE TO ORDER TO
SHOW CAUSE RE DEFENDANT'S
NOTICE OF MOTION AND MOTION TO
STAY THE CASE, AND/OR STRIKE THE
COLLECTIVE ACTION ALLEGATIONS
CLASS ACTION**

Date: August 9, 2024

Time: 10:00 a.m.

Courtroom: 6

Judge: Hon. Charles R. Breyer

Complaint Filed: March 14, 2024

Trial Date: Not Set

1 **I. INTRODUCTION**

2 Plaintiff Chance Tidyman (“Plaintiff” or “Tidyman”) anticipated having relevant Apex
 3 witness testimony from Defendant’s Chief Executive Officer (“CEO”), Peter Gassner, and Chief
 4 People Officer (“CPO”) Vivien Welsh regarding the specific discriminatory policies and practices
 5 alleged in Plaintiff’s Complaint filed in this Court on March 14, 2024, before the June 11, 2024
 6 deadline to oppose Defendant’s instant Motion to Stay based on an April 26, 2024 Order
 7 compelling those depositions. However, Defendant substituted new counsel and refused to produce
 8 those witnesses for deposition until after hearing on its motion for reconsideration (and any
 9 subsequent appeal, if necessary) scheduled for hearing on June 21, 2024. Plaintiff’s Opposition to
 10 Veeva’s pending MSJ was due June 14, 2024, and trial was scheduled for September 26, 2024, so
 11 Plaintiff had to file an *ex parte* application to continue the MSJ and trial dates which the Court
 12 granted on June 7, 2024, rescheduling the MSJ hearing and trial dates to February 7, 2025, and June
 13 6, 2025, respectively. The Court only recently granted Defendant’s Motion for Reconsideration
 14 without prejudice on June 21, 2024¹ preventing the Apex depositions from going forward.
 15 (Declaration of Shane K. Anderies in Support of Response to Order to Show Cause (“Anderies
 16 Decl.” ¶ 1, Ex. 1 – 6/21/24 Order Granting Veeva’s Motion for Reconsideration.)

17 Regardless of—or even more so because of—the State Court’s flip-flopping Orders
 18 regarding Apex depositions—there is no reason to stay Plaintiff’s EEOC Complaint. Plaintiff’s
 19 FEHA Complaint was filed March 28, 2022. Veeva did not file a Motion for Summary Judgment
 20 (“MSJ”) until November 9, 2023, which was continued twice and now scheduled for hearing on
 21 February 7, 2025. Far from fearing his FEHA Complaint will be dismissed on a theory Veeva
 22 would have and should have requested dismissal from the outset had it any merit, the reality is
 23 Defendant’s new counsel filed the instant Motion to Stay following the State Court’s Order
 24 compelling Defendant’s Apex witness depositions for fear of how their testimony would negatively
 25 impact its defense of Plaintiff’s EEOC Complaint. Plaintiff’s Collective Action Complaint is
 26 redundant only to the extent it references the phrase “age discrimination.” In every other relevant
 27

28 ¹ As of the date of this Response, Plaintiff has not received service of the Order and so downloaded it from the Court’s website and attaches it here for the Court’s reference.

1 respect, it is procedurally and substantively distinct from his State Court Action such that there is no
 2 reason for it to be stayed.

3 Additionally, there is no basis upon which to strike the allegations in Plaintiff's EEOC
 4 Complaint, which more than sufficiently demonstrates a *prima facie* case of disparate impact
 5 discrimination based on Defendant's policies and procedures. Plaintiff lacks specific information
 6 regarding alleged class members only because Defendant has opposed Plaintiff's related requests
 7 for such information in his State Court Action. Defendant cannot refuse to provide information
 8 regarding potential collective members in state court and then blame Plaintiff for failing to provide
 9 that level of detail in his Federal court Complaint.

10 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

11 Plaintiff Chance Tidyman ("Plaintiff") filed a related individual age discrimination
 12 Complaint ("FEHA Complaint") in Alameda County Superior Court on March 28, 2022, Case No.
 13 22-CV-009065 ("State Court Action"). On August 4, 2023, during discovery related to his
 14 Complaint, Tidyman learned for the first time that Veeva had a written policy and practice
 15 requiring all terminated employees over the age of 40 as a condition of receiving severance
 16 benefits to sign an invalid release and waiver of their ADEA rights. Tidyman filed a timely Charge
 17 of Discrimination with the EEOC thereafter on December 15, 2023, received a Notice of Right to
 18 Sue on December 18, 2023, and timely filed the instant Complaint ("EEOC Complaint") in this
 19 lawsuit on March 14, 2024 ("Federal Court Action").

20 On April 26, 2024, the Court denied in part Defendant Veeva's Motion for Protective Order
 21 Re Apex Witness Depositions ("Apex Order"). On May 9, 2024, Veeva substituted new counsel of
 22 record who filed a Motion for Reconsideration of the Apex Order on May 17, 2024, which was not
 23 decided until June 21, 2024.

24 **III. LEGAL ARGUMENT**

25 **A. The Colorado River Doctrine is the Exception to the General Rule Allowing for 26 Jurisdiction of Pendent State Law Claims and Does Not Apply Absent 27 Exceptional Circumstances Which Do Not Exist**

28 As Defendant's moving papers correctly point out, "“Generally, as between state and federal
 courts, the rule is that ‘the pendency of an action in the state court is no bar to proceedings

1 concerning the same matter in the Federal court having jurisdiction.”” *Ernest Bock, LLC v.*
 2 *Steelman*, 76 F.4th 827, 835 (9th Cir. 2023), cert. denied, 144 S. Ct. 554 (2024) (citing *Colorado*
 3 *River Water Conservation District v. United States (Colorado River)*, 424 U.S. 800, at 817 (1976)
 4 (internal citations omitted).

5 ““The doctrine of abstention, under which a District Court may decline
 6 to exercise or postpone the exercise of its jurisdiction, is an
 7 extraordinary and narrow exception to the duty of a District Court to
 8 adjudicate a controversy properly before it. Abdication of the
 9 obligation to decide cases can be justified under this doctrine only in
 the exceptional circumstances where the order to the parties to repair
 to the state court would clearly serve an important countervailing
 interest.””

10 *Colorado River Water Conservation Dist. v. U. S.* (1976) 424 U.S. 800, 813. In *Executive Software*
 11 *North America, Inc. v. U.S. Dist. Court for Cent. Dist. of California* (9th Cir. 1994) 24 F.3d 1545,
 12 1558 (overruled by *California Dept. of Water Resources v. Powerex Corp.* (9th Cir. 2008) 533 F.3d
 13 1087), the District court could not decline to exercise supplemental jurisdiction over pendent state
 14 claims in an employment discrimination action on ground that retention of state claims would
 15 require expenditure of substantial judicial time and effort. The Court of Appeal explained, “at the
 16 Supreme Court level, the most analogous use of “exceptional circumstances” is in the closely
 17 related area of *Colorado River* abstention, where the Court has used the term to denote ““an
 18 extraordinarily narrow exception to the duty of a District Court to adjudicate a controversy properly
 19 before it.”” *Moses H. Cone Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 14, 103 S.Ct. 927, 936, 74
 20 L.Ed.2d 765 (1983) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S.
 21 800, 813, 96 S.Ct. 1236, 1244, 47 L.Ed.2d 483 (1976) (internal quotations omitted)).” *Id.* at fn. 10.

22 Not only do exceptional circumstances not exist, but Defendant’s positions taken in state
 23 court proceedings belie its arguments for a stay of this separate action. *Acuna v. Regents of*
 24 *University of California* (1997) 56 Cal.App.4th 639 is inapposite as it involved dismissal of
 25 plaintiff’s FEHA claims based on *res judicata*: “Where, as here, the plaintiff ‘elects to proceed to
 26 trial and judgment in the federal court, his entire cause of action is either merged in or barred by the
 27 federal court judgment so that he may not thereafter maintain a second suit on the same cause of
 28 action in a state court.”” *Id.* at 658 (internal citation omitted). Conversely, Defendant’s misplaced

1 reliance on *Ernest Bock, LLC v. Steelman* (9th Cir. 2023) 76 F.4th 827 cert. denied (2024) 144 S.Ct.
 2 554 supports denial of a stay motion which requires parallelism of state and federal court
 3 proceedings as a threshold requirement and ultimately a finding that the federal court will have
 4 nothing further to do in resolving any substantive part of a case, whether it stays or dismisses. *Id.*
 5 at 838. On its face, Plaintiff's federal ADEA collective action differs from his individual FEHA
 6 claims for wrongful termination. Defendant has emphasized this difference in its various state court
 7 pleadings. For example, in support of its MSJ, Defendant alleges:

8 Veeva expects Plaintiff will argue the Severance Agreement release is
 9 not enforceable to bar any of his claims here because Veeva did not
 10 allow him 21 days to consider the agreement before signing it as
 11 required by the federal Older Worker Benefit Protection Act
 12 ("OWBPA"). That argument is without merit because OWBPA
 13 applies only to releases of claims under the federal Age
 14 Discrimination in Employment Act ("ADEA"); it does *not* apply to
 15 releases of FEHA claims or other *state law* claims like those Plaintiff
 16 has asserted in this action. *Skrbina, supra*, 45 Cal.App.4th at 1367.
 17 *See also Kinghorn v. Citibank, N.A.* (N.D. Cal. Jan. 20, 1999) 1999
 18 WL 30534, *7 (finding ADEA waiver in release agreement signed by
 19 plaintiff was unenforceable, but release of FEHA and other state law
 20 claims was valid, and granting summary judgment to employer on
 21 those claims)

22 (Anderies Decl. ¶ 2, Ex. 2 - Veeva MPA Supp. MSJ 18:12-21.)

23 In support of its recent motion for reconsideration, Defendant alleged:

24 Indeed, Plaintiff apparently seeks information about the development
 25 of Veeva's employment policies not to support his claims in this case
 26 (to which they are plainly irrelevant), but instead to support the
 27 separate potential collective action Plaintiff recently filed in federal
 28 court. See Request for Judicial Notice, Exhibit 1 (federal collective
 29 action complaint entitled *Tidyman v. Veeva Systems, Inc.* (N.D.
 30 Cal.), No. 3:24-cv-01583).

31 (Anderies Decl. ¶ 3, Ex. 3 - Veeva Reply Supp. Mot. for Recon. 4:16-20 and Supporting Request
 32 for Judicial Notice.)

33 Defendant even refused Plaintiff's initial offer to stipulate to have the claim added to his
 34 State Court action for the sake of convenience. (Anderies Decl. ¶ 4, Ex. 4 - 12/28/23 email from
 35 Anderies to Neulight Re Motion to Amend Complaint to Add FLSA Collective Action for Age
 36 Discrimination.)

37 B. **The Complaint Alleges Disparate Impact Age Discrimination in Violation of the**

1 **ADEA based on Policies and Practices Applicable to All of Veeva's Employees**
 2 **which is Neither Time-Barred Nor Waived by Plaintiff's Signed Release and**
 2 **Which May Be Enforced through an FLSA Collective Action**

3 The United States Supreme Court held that a release has no effect under the ADEA unless it
 4 complies with the OWBPA, including provide the employee enough time to consider the
 5 waiver. *Oubre v. Entergy Operations, Inc.*, 522 U.S. 422 (1998). The Supreme Court has also
 6 determined that the *disparate impact* theory can be relied upon under the ADEA. *Meacham v.*
 7 *Knolls Atomic Power Laboratory*, 128 S. Ct. 2395 (2008); *Smith v. City of Jackson*, 544 U.S. 228
 8 (2005). The disparate impact theory is based on the contention that a policy or practice that is
 9 neutral on its face and consistently applied has a discriminatory impact on individuals in the
 10 protected age group. The EEOC issued a final rule entitled "Waivers of Rights and Claims: Tender
 11 Back of Consideration" on December 11, 2000 set forth in 29 C.F.R. § 1625.23 which states an
 12 individual is not required to tender back the payments given for a settlement agreement as a
 13 condition of filing a lawsuit under the ADEA if he or she alleges that the agreement was not
 14 "knowing and voluntary." Plaintiff's allegations of an Involuntary Termination Guidelines policy
 15 applicable to all employees which requires severance be conditioned on the employee signing a
 16 release of all claims, including discrimination claims, within 5 days instead of the 21 days required
 17 by the ADEA is sufficient to state a disparate impact age discrimination claim.

18 Individuals often challenge employers who use subjective criteria in connection with
 19 selection, hiring, promotion or other employment-related decisions. To prevail in a discrimination
 20 case, the individual challenging the employer's decision or practice must show either that (1) the
 21 employer's use of subjective criteria provides evidence of its discriminatory treatment of older
 22 workers under the intentional discrimination theory or (2) the use of such criteria had a significantly
 23 discriminatory impact on older individuals. *See Yartzoff v. State of Oregon*, 745 F.2d 557, 35 E.P.D.
 24 ¶ 34,737 (9th Cir. 1984); *Peters v. Lieuallen*, 693 F.2d 966 (9th Cir. 1982); *Wang v. Hoffman*, 694
 25 F.2d 1146 (9th Cir. 1982). Plaintiff also alleges Defendant used a confidential and subjective Stack
 26 Ranking practice applicable to all Sales Account Executives which practice had a significantly
 27 discriminatory impact on older individuals.

28 Section 7 of the ADEA sets forth the means of enforcing the ADEA's substantive provisions

1 and incorporates the remedies contained in the Fair Labor Standards Act ("FLSA") including
 2 permitting employees to bring individual or class actions for damages and other relief. 29 U.S.C. §
 3 626(b); *Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 107 L.Ed.2d 480, 110 S. Ct. 482
 4 (1989); *EEOC v. Pan American World Airways, Inc.*, 897 F.2d 1499 at 1504 (9th Cir. 1990). The
 5 time limitations to bring a claim may be modified due to equitable considerations including (1)
 6 equitable tolling, which often focuses on the plaintiff's excusable ignorance of the limitations period
 7 and on lack of prejudice to the defendant, and (2) equitable estoppel, which usually focuses on the
 8 actions of the defendant. See, e.g. *Naton v. Bank of California*, 649 F.2d 691, 27 F.E.P. Cases 510
 9 (9th Cir. 1981) (holding applicable limitations period is activated once the employee knows or
 10 should know that an unlawful employment practice has been committed), and *Aronsen v. Crown*
 11 *Zellerbach*, 662 F.2d 584, 27 F.E.P. Cases 518 (9th Cir. 1981), cert. denied, 459 U.S. 1290 (1983)
 12 (reversing summary judgment for Defendant where ADEA filing periods are subject to equitable
 13 modification). "Whether to grant equitable relief from the statutory provisions is a matter that
 14 should be determined "on a case-by-case basis, depending on the equities in each case." *Aronsen v.*
 15 *Crown Zellerbach* (9th Cir. 1981) 662 F.2d 584, 593.

16 **IV. CONCLUSION**

17 The Court should deny Defendant's Motion to Stay and Strike Collective Allegations
 18 because the Colorado River doctrine does not apply and because Plaintiff's Complaint alleges
 19 sufficient facts in support of a *prima facie* case of disparate impact age discrimination in violation
 20 of the ADEA that is separate and distinct from his separate individual discrimination and wrongful
 21 termination claims in violation of FEHA in state court.

22
 23 DATED: July 1, 2024

ANDERIES & GOMES LLP

24 BY: /s/ Shane K. Anderries
 25 Shane K. Anderries
 26 Attorney for Plaintiff
 27 CHANCE TIDYMAN

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